

111TH CONGRESS
1ST SESSION

S. 376

To provide rules for the modification or disposition of certain assets by real estate mortgage investment conduits pursuant to division A of the Emergency Economic Stabilization Act of 2008, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 4, 2009

Mr. REED (for himself, Mr. DODD, Mr. KERRY, Mr. SCHUMER, Ms. STABENOW, and Mr. KENNEDY) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To provide rules for the modification or disposition of certain assets by real estate mortgage investment conduits pursuant to division A of the Emergency Economic Stabilization Act of 2008, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Real Estate Mortgage
5 Investment Conduit Improvement Act of 2009”.

1 **SEC. 2. SPECIAL RULES FOR MODIFICATION OR DISPOSI-**
 2 **TION OF QUALIFIED MORTGAGES OR FORE-**
 3 **CLOSURE PROPERTY BY REAL ESTATE MORT-**
 4 **GAGE INVESTMENT CONDUITS.**

5 (a) IN GENERAL.—If a REMIC (as defined in section
 6 860D(a) of the Internal Revenue Code of 1986) modifies
 7 or disposes of a troubled asset under the Troubled Asset
 8 Relief Program established by the Secretary of the Treas-
 9 ury under section 101(a) of the Emergency Economic Sta-
 10 bilization Act of 2008 or under rules established by the
 11 Secretary under section 3 of this Act—

12 (1) such modification or disposition shall not be
 13 treated as a prohibited transaction under section
 14 860F(a)(2) of such Code, and

15 (2) for purposes of part IV of subchapter M of
 16 chapter 1 of such Code—

17 (A) an interest in the REMIC shall not fail
 18 to be treated as a regular interest (as defined
 19 in section 860G(a)(1) of such Code) solely be-
 20 cause of such modification or disposition, and

21 (B) any proceeds resulting from such
 22 modification or disposition shall be treated as
 23 amounts received under qualified mortgages.

24 (b) TERMINATION OF REMIC.—For purposes of the
 25 Internal Revenue Code of 1986, an entity which is a
 26 REMIC (as defined in section 860D(a) of the Internal

1 Revenue Code of 1986) shall cease to be a REMIC if the
2 instruments governing the conduct of servicers or trustees
3 with respect to qualified mortgages (as defined in section
4 860G(a)(3) of such Code) or foreclosure property (as de-
5 fined in section 860G(a)(8) of such Code)—

6 (1) prohibit or restrict (including restrictions on
7 the type, number, percentage, or frequency of modi-
8 fications or dispositions) such servicers or trustees
9 from reasonably modifying or disposing of such
10 qualified mortgages or such foreclosure property in
11 order to participate in the Troubled Asset Relief
12 Program established by the Secretary of the Treas-
13 ury under section 101(a) of the Emergency Eco-
14 nomic Stabilization Act of 2008 or under rules es-
15 tablished by the Secretary under section 3 of this
16 Act,

17 (2) commit to a person other than the servicer
18 or trustee the authority to prevent the reasonable
19 modification or disposition of any such qualified
20 mortgage or foreclosure property,

21 (3) require a servicer or trustee to purchase
22 qualified mortgages which are in default or as to
23 which default is reasonably foreseeable for the pur-
24 poses of reasonably modifying such mortgages or as
25 a consequence of such reasonable modification, or

1 (4) fail to provide that any duty a servicer or
 2 trustee owes when modifying or disposing of quali-
 3 fied mortgages or foreclosure property shall be to
 4 the trust in the aggregate and not to any individual
 5 or class of investors.

6 (c) EFFECTIVE DATES.—

7 (1) SUBSECTION (a).—Subsection (a) shall
 8 apply to modification and dispositions after the date
 9 of the enactment of this Act, in taxable years ending
 10 on or after such date.

11 (2) SUBSECTION (b).—

12 (A) IN GENERAL.—Except as provided in
 13 subparagraph (B), subsection (b) shall take ef-
 14 fect on the date that is 3 months after the date
 15 of the enactment of this Act.

16 (B) EXCEPTION.—The Secretary of the
 17 Treasury may waive the application of sub-
 18 section (b) in whole or in part for any period
 19 of time with respect to any entity if—

20 (i) the Secretary determines that such
 21 entity is unable to comply with the require-
 22 ments of such subsection in a timely man-
 23 ner, or

1 (ii) the Secretary determines that
2 such waiver would further the purposes of
3 this Act.

4 **SEC. 3. ESTABLISHMENT OF A HOME MORTGAGE LOAN RE-**
5 **LIEF PROGRAM UNDER THE TROUBLED**
6 **ASSET RELIEF PROGRAM AND RELATED AU-**
7 **THORITIES.**

8 (a) ESTABLISHMENT.—Not later than 30 days after
9 the date of enactment of this Act, the Secretary of the
10 Treasury shall establish and implement a program under
11 the Troubled Asset Relief Program and related authorities
12 established under section 101(a) of the Emergency Eco-
13 nomic Stabilization Act of 2008 (12 U.S.C. 5211(a))—

14 (1) to achieve appropriate broad-scale modifica-
15 tions or dispositions of troubled home mortgage
16 loans; and

17 (2) to achieve appropriate broad-scale disposi-
18 tions of foreclosure property.

19 (b) RULES.—The Secretary of the Treasury shall
20 promulgate rules governing the—

21 (1) reasonable modification of any home mort-
22 gage loan pursuant to the requirements of this Act;
23 and

1 (2) disposition of any such home mortgage loan
2 or foreclosed property pursuant to the requirements
3 of this Act.

4 (c) CONSIDERATIONS.—In developing the rules re-
5 quired under subsection (b), the Secretary of the Treasury
6 shall take into consideration—

7 (1) the debt-to-income ratio, loan-to-value ratio,
8 or payment history of the mortgagors of such home
9 mortgage loans; and

10 (2) any other factors consistent with the intent
11 to streamline modifications of troubled home mort-
12 gage loans into sustainable home mortgage loans.

13 (d) USE OF BROAD AUTHORITY.—The Secretary of
14 the Treasury shall use all available authorities to imple-
15 ment the home mortgage loan relief program established
16 under this section, including, as appropriate—

17 (1) home mortgage loan purchases;

18 (2) home mortgage loan guarantees;

19 (3) making and funding commitments to pur-
20 chase home mortgage loans or mortgage-backed se-
21 curities;

22 (4) buying down interest rates and principal on
23 home mortgage loans;

24 (5) principal forbearance; and

1 (6) developing standard home mortgage loan
2 modification and disposition protocols, which shall
3 include ratifying that servicer action taken in antici-
4 pation of any necessary changes to the instruments
5 governing the conduct of servicers or trustees with
6 respect to qualified mortgages or foreclosure prop-
7 erty are consistent with the Secretary of the Treas-
8 ury's standard home mortgage loan modification and
9 disposition protocols.

10 (e) PAYMENTS AUTHORIZED.—The Secretary of the
11 Treasury is authorized to pay servicers for home mortgage
12 loan modifications or other dispositions consistent with
13 any rules established under subsection (b).

14 (f) RULE OF CONSTRUCTION.—Any standard home
15 mortgage loan modification and disposition protocols de-
16 veloped by the Secretary of the Treasury under this sec-
17 tion shall be construed to constitute standard industry
18 practice.

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